



State of New Jersey

**ELECTION LAW ENFORCEMENT COMMISSION**

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**PUBLIC SESSION MINUTES**

**MARCH 2, 1989**

All of the Commission members and senior staff were present.

Chairman Bedford called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-8 et seq., special notice of the meeting of the Commission had been filed with the Secretary of State's Office and distributed to the entire State House Press Corps.

The meeting convened at 9:20 a.m. at the Commission's offices at 28 West State Street, Trenton, New Jersey.

1. Approval of Public Financing Funds

Public Financing Director Nedda Massar reviewed an application for public matching funds received from gubernatorial candidate Chuck Hardwick. Ms. Massar distributed copies of a printout which indicated that Assemblyman Hardwick submitted \$319,096 for match and of this amount, \$41,915 was rejected. Thus, \$277,181 in contributions was accepted for match. This amount thus qualified the campaign of gubernatorial candidate Hardwick for receipt of matching funds. Ms. Massar recommended, therefore, that the Commission certify \$454,362 in public funds for distribution to gubernatorial candidate Hardwick. This figure was arrived at by subtracting \$50,000 from \$277,181 and multiplying the resultant figure of \$227,181 by two, which is the number of public dollars distributed for every one dollar submitted.

Ms. Massar added that the error rate on the submission was 11 percent, which is within an acceptable range.

Chairman Bedford asked Director Massar to define "refund" as it appears in this context.

Director Massar explained that the term referred to a refund of a contribution by the campaign.

Commissioner Linett asked if campaigns are notified about submission items that are rejected for match.

Director Massar responded that both adjustment and rejection letters are sent to the campaign as soon as possible after the Commission meets to certify the campaign's submission for match.

Commissioner Linett asked if the computer can identify excess contributions.

Director Massar answered in the affirmative. She indicated that this is one reason the staff is so meticulous about requiring campaigns to report the names and addresses of contributors so accurately.

Director Massar added that next week the Commission will release a computer-generated list of contributors to the Hardwick campaign. She said further that staff has obtained the permission of the Hardwick campaign to also disclose contributors of less than one hundred dollars.

Executive Director Herrmann added that the Commission's public financing computer program is much more sophisticated now than in the past. He said that there is extensive computer analysis of submissions as part of the certification process.

On a motion by Commissioner Linett, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the certification of \$454,362 in public funds to the gubernatorial campaign of Chuck Hardwick.

## 2. Gubernatorial Regulations

At this juncture, Legal Director Nagy provided an update on the status of the proposed regulations approved at the previous meeting.

He stated that as of this morning, those regulations submitted for emergency adoption have not been signed by the Governor. He said that the Governor has asked the Commission to remove the regulations on political communications from the emergency package. He said that the Governor's office does not see the justification for an emergency edict on these regulations. Legal Director Nagy said that he anticipated the Governor would sign the emergency adoption order for the other regulations.

Chairman Bedford asked for a motion to withdraw the political communication regulation from the emergency package.

On a motion by Vice Chairman McNary, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission approved the action of withdrawing the political communication regulation from the emergency adoption.

3. Executive Director's Report

Executive Director Herrmann stated that he had two items to bring before the Commission. He said that the meeting in early April has been set for April 5, 1989 at 9:30 a.m. in Maplewood, New Jersey.

Secondly, said the Executive Director, the Commission recently received an advisory opinion request from Senator Richard Codey, who has withdrawn from the gubernatorial race. He said that Senator Codey was never an official candidate and had only been "testing the waters." Executive Director Herrmann said that the advisory opinion request asks guidance on how to dispense with funds in his "testing the waters" account.

Commissioner Linett suggested that the Commission treat these funds as surplus funds.

Chairman Bedford said that the opposite point of view would permit any disposition of the funds because the Commission has no jurisdiction over a "testing the waters" committee.

Vice Chairman McNany said that he believes that the funds should be treated like any other political committee funds.

Executive Director Herrmann suggested that a "middle position" might be a response that the Commission has no jurisdiction along with a paragraph which indicates that the Commission believes the committee should disperse the funds in the manner prescribed for surplus campaign funds.

The Commission directed Counsel Farrell, in consultation with staff, to draft a response for consideration at the next meeting.

4. Advisory Opinion No. 05-1989

This advisory opinion request, by Stephen J. Edelstein, involves two questions relative to activity by the Democratic State Committee, especially as this activity applies to Democratic gubernatorial candidates in both the primary and general elections.

The questions are:

- 1) If the State Committee conducts the foregoing activities (i.e., issue-oriented research, targeting research, polling research, enhancement of party mailing lists, and voter registration), and makes the information available to any incumbent officeholder or candidate for public office who is a member of the Democratic party, including the person who may become the party's nominee for governor, will any portion of the cost of such activities be allocable to the candidate or count against the candidate's spending limit?

- 2) Are all State Committee activities which do not violate N.J.A.C. 19:25-16.16 (political party committee contributions, including expenditure of any funds in furtherance of a candidate) insulated from allocation to any candidate for Governor and computation against the relative spending limit even if the candidate ultimately derives a benefit from them?

Chairman Bedford recognized Steven Edelstein, Counsel to the Democratic State Committee.

Mr. Edelstein stated that the request is clear on its face. He said that the Democratic State Committee is engaged in an effort to institutionalize certain party functions that would be of benefit to all Democratic candidates.

Mr. Edelstein added that any issue research, polling, and targeting research, etc., would be non-specific to any candidate because the Democratic State Committee is very aware of the statutory prohibitions against supporting any candidate in the primary. Mr. Edelstein stated that the Democratic Party did not intend to violate this prohibition.

Chairman Bedford asked if the Democratic State Committee would also request an advisory opinion from the Attorney General since a prohibition against party involvement in the primary is also contained in that part of Title 19 under the jurisdiction of the Attorney General.

Mr. Edelstein responded that the party was not seeking an opinion from the Attorney General since it did not intend to violate the law.

Counsel Farrell said that Section 11 of the Commission's Law parallels the other section in Title 19. He added that the law differentiates between the functions able to be carried out by the party in the primary and those permitted in the general election. He added that the issues broached by Mr. Edelstein are different as they relate to the primary election and as they relate to the general election.

Mr. Edelstein continued by saying that he would like the Commission to focus on the question of whether any portion of the expense for these activities would be allocated against the expenditure limit of a gubernatorial candidate, assuming that the Democratic State Committee undertakes these activities.

Chairman Bedford asked: "Suppose you have a registration drive that concentrates on South Jersey?" "Wouldn't that give one candidate an unfair advantage?"

Mr. Edelstein stated that his advisory opinion request assumes a neutral set of facts.

Chairman Bedford asked: "If the fairness, or even-handed approach, is distorted by the State Committee, then would it be a correct assumption that another candidate could complain to the Commission?" "Would it be fair to say," he continued, "that the Commission would then have to decide if the State Committee violated the statute by acting in an unfair manner, and if the expenditure would be allocated against a certain candidate's expenditure limit?"

Mr. Edelstein replied that Chairman Bedford's assumptions are correct. He reiterated, however, that the Democratic State Committee will be neutral in the primary elections. Mr. Edelstein continued by saying that the real issue concerns those activities the Democratic State Committee believes a political party should be engaged in at all times. He asked rhetorically, "If a political party cannot do issue research, targeted research, undertake voter registration, get-out-the-vote drives and polling, then what can it do?" Mr. Edelstein reiterated that every Democratic candidate will have equal access to the information. He said that there would be no violation of the administrative code or the statute.

Mr. Edelstein next addressed Counsel Farrell's remarks concerning the distinction made in the statute between a party's functions in the general election. Mr. Edelstein said that during the general election it is appropriate for the party to focus attention on its candidates but that during the primary it cannot focus its attention on any one candidate. He said, however, that this does not mean that the party should shut down during the period. The State Party, Mr. Edelstein said, has decided that it wants the State Party Committee to undertake the functions enumerated above, which it should be doing, and have them institutionalized. Mr. Edelstein warned that if the Commission should decide against the Democratic State Committee's position, then the party system would be greatly inhibited.

Commissioner Linett asked if this advisory opinion request was limited to the primary election.

Mr. Edelstein responded that he views the State Committee functions as ongoing, as regular activities of the State party that would be reported on a quarterly basis.

Commissioner Linett said that he was asking this question because the law contains a \$1,500 contribution limit for the State Party Committees in the general election, and that the Counsel for the State Democratic Committee seemed to be focusing on the primary election.

Mr. Edelstein said that as a practical matter, this information will be gathered during the primary season and made available to Democratic general election candidates. Furthermore, Mr. Edelstein said, in making this information available to the Democratic gubernatorial candidates in November, the State Committee does not believe that the cost of the party building activities should be allocable against the candidate expenditure limit in the general election.

Vice Chairman McNany asked Mr. Edelstein to provide a time-frame on targeted research and be more specific about what it is.

Mr. Edelstein said that there should be no time-frame for this activity and that these ongoing, non-specific activities, should be appropriate during any period of time.

Commissioner Linett stated, that in his opinion, all polls are not necessarily neutral.

Mr. Edelstein agreed, but indicated that as long as they are, it should be allowed by the Commission.

Counsel Farrell posed what he termed a focusing question. If a poll asked how all candidates stacked up against ten different issues or against candidates of the opposing party, then the poll could be construed as completely neutral. Counsel Farrell said, however, if the questions are formulated in such a way as to benefit one candidate over another, then the poll could be viewed as non-neutral. Counsel Farrell said that in the general election the party's goal is to elect its candidates, but under the law, in the primary, its goal must be the advancement of the party interest. Counsel Farrell also said that consideration must be given to preserving the integrity of the contribution and expenditure limits in the general election. He said that the party might offer the results of its poll research (worth \$25,000) to a gubernatorial candidate and the candidate has the option of accepting or rejecting the information. Counsel Farrell said that if the candidate accepts the information, then the integrity of the contribution and expenditure limits must be addressed.

Commissioner Linett said that he believed that the Commission should narrow its response to the primary election and be specific as to what activity is appropriate and what is not.

Mr. Edelstein said that all of the activity that he has been describing appropriately advances the party cause. He stated that a party does not have a candidate in the primary but knows that it will have one in the general election.

Commissioner Linett asked Mr. Edelstein to explain what comprises targeted research.

Mr. Edelstein deferred to Ms. Emma Byrne, Executive Director of the Democratic State Committee.

Ms. Byrne said that targeted research included demographic studies, primarily of swing districts. She said that it also involved researching the history of voting patterns in districts and the voting records of its candidates in those districts as well as opposition candidates in those districts.

Chairman Bedford asked if this research were statewide.

Ms. Byrne answered in the affirmative. She said that the research dealt with swing districts for the purpose of focusing voter registration activities, etc.

Counsel Farrell asked if it was fair to say that this kind of data will help some and not all candidates in the primary.

Ms. Byrne said that the data developed through targeted research will be valuable to Democratic candidates across the board, from the top of the ballot to the bottom.

Mr. Edelstein said that the position of the Democratic State Committee is that it ought to be able to engage in this activity without running afoul of the law.

Commissioner Axtell said that it would seem to him that the party would be doing this on an ongoing basis. Commissioner Axtell said that he assumed that the Committee was already doing this kind of work. He asked why the State Committee was raising this issue at this particular time.

Mr. Edelstein said that the party has been doing this type of activity all along, but that it was requesting an advisory opinion at this time in light of the gubernatorial election and the complexity of the laws as they pertain to these elections.

Executive Director Herrmann asked, "If the party did a media blitz in the general election which benefitted the gubernatorial candidate, would it be allocable?"

Mr. Edelstein said that in that case, the expenditure would probably be allocable. He continued: "But if pre-primary activity such as voter registration were to benefit the eventual nominee in the general election, would that be allocable?"

Executive Director Herrmann said that he believed that the Commission always considered that activity to be appropriate party-building activity and outside the expenditure limit.

Mr. Edelstein said that he concurred with that point of view.

Executive Director Herrmann, returning to the question of advertising, said that if the advertising were specific (in the general election) to a candidate, it would probably be allocable, but that if it is generic, it would not be.

Mr. Edelstein said that in this instance of neutrality, the party is only neutral with respect to its own candidates, not of the other party. In

the general election, he said, the assumption would probably be that advertising specific to a gubernatorial candidate would be allocable.

Chairman Bedford recognized Mr. Louis Rainone, Counsel to the Gubernatorial Campaign of Assemblyman Karcher.

Mr. Rainone said that in his opinion, the activities that the Democratic State Committee propose to undertake are virtuous as long as they are applied to the general election. He said, however, that in the primary, these activities are prone to abuse. He said that he would review all of the activities listed to demonstrate what he means. Mr. Rainone said that everyone of the activities mentioned by the State Committee is central to a campaign. He asked: "How can you target research and have it be neutral or undertake a get-out-the-vote drive and have it be neutral?" Mr. Rainone continued: "How can you target in the primary and have it be neutral. "Why," he said, "would the party want to conduct a get-out-the-vote drive in the primary if it were neutral?"

Moreover, Mr. Rainone said that he did not believe that the Commission could do an issues poll that is neutral. He said, for instance, if there are two candidates and one is a strong advocate of automobile insurance reform and the other is strong on the environment, and the poll asks the public which is the most important issue, how can the release of that information be neutral. If the poll finds that environmental issues are key, then the environmental candidate will benefit.

Executive Director Herrmann interjected that the opposite conclusion could also be drawn. He said that this information, equally accessed by both candidates, could give the candidate who was the weakest on the environment the opportunity to shift gears. In this way, Mr. Herrmann continued, this poll could be viewed as even-handed.

Mr. Rainone continued that timeliness is a concern. He said that the Karcher campaign is well organized and has already bought a mailing list and polls, etc. He reiterated that these items were essential to campaigns. Mr. Rainone said that only another candidate could benefit from this state committee information and not Mr. Karcher, because his well organized campaign has already spent money on these items. He said that because of this set of facts, for whatever the party may do in the future, it cannot be neutral in this primary.

Legal Director Nagy asked Mr. Rainone whether he would have any objection to State Committee support of a general election candidate. He responded in the negative. He said his objection was based solely on the statutory prohibition against political party committee assistance in a primary election. Mr. Nagy asked Mr. Rainone whether he was aware of a 9th Circuit case paneling before the United States Supreme Court that had held it was unconstitutional for a State law to prevent a political party committee from endorsing a primary candidate. He said he was not.

Chairman Bedford asked Mr. Rainone if he believed it is a good thing to strengthen the parties.

Mr. Rainone said that with respect to voter registration, it is a good thing to strengthen the parties but that he is not sure with respect to polls.

Commissioner Linett asked if this Commission had the authority to prevent the Democratic State Committee from doing research. Mr. Rainone said that the question was not whether research should be discontinued, but if the party should be able to give this research to another candidate in the primary.

Executive Director Herrmann asked: "What is the problem with the party giving this research to the candidates if each one has equal access to it?"

Mr. Rainone replied that the statute reads: "In aid of any candidate" and that in his opinion this means that the state party is precluded from giving research information to any of the candidates, whether one is speaking of one candidate or ten.

Counsel Farrell concurred that the statute did contain that language but said that the question is: "If material helps more than one candidate, can it be said to be in aid of a particular candidate?"

Executive Director Herrmann said that the law never intended to prevent the parties from undertaking legitimate party-building activities. He said, further, that it has been his sense that the statute only contemplated preventing the parties from supporting one candidate in the primary and never contemplated precluding them from undertaking activities that aided all candidates equally.

Mr. Rainone said that Title 19 clearly said that this activity is illegal. He said that the statute states "any money spent in aid of any candidate," not just one, is prohibited. He said that it means any candidate.

Chairman Bedford said that Mr. Rainone's interpretation was a very strict reading of the statute.

Mr. Rainone said that his interpretation was the one given up to this point. He said that the Karcher campaign believed that this activity by the State Committee will benefit one candidate and not all. Moreover, he continued, 19 out of 21 democratic county chairman have come out in support of one candidate. He asked how, in light of this fact, can the Commission view this activity by the State Committee as neutral.

Executive Director Herrmann said that this activity has apparently gone on for a long time in both parties. He said that the Commission would only be confirming political reality.

Vice Chairman McNary asked Mr. Rainone for a definition of the primary season.

Mr. Rainone said that it would be the period from the previous general election to the primary election.

Vice Chairman McNary asked what the legitimate party activities are. Are they fundraising; research polls?

Mr. Rainone responded that completing polls is not a problem, but that giving them to a candidate is.

Vice Chairman McNary asked if the committee can do it during this time-frame and not release it.

Mr. Rainone queried: "Why would a poll be taken by the committee if it were not going to be released?"

Chairman Bedford suggested that the Commission focus on the argument made by Mr. Rainone that during this primary season, the activity contemplated by the State Committee would be unfair, but in the future, it may not be.

Commissioner Linett said that an argument could be made that much of this work would ultimately benefit the candidate in the general election. He said that the Commission would then have to consider the question of whether the expenditure would be allocable against the gubernatorial candidate's expenditure limit.

Chairman Bedford next recognized Mr. Angelo Genova, Counsel to the Florio for Governor campaign.

Mr. Genova stated that all Democratic candidates have an interest in the outcome of this session. He said that he would address that question but first was compelled to state his views as to the innuendo advanced by Mr. Rainone that candidate Florio would be the beneficiary of this party activity. He said that he was troubled that Mr. Rainone would attempt to use this hearing as a vehicle for advancing the political campaign of Assemblyman Karcher. He said that in his long experience, he has never seen the Commission used in this way.

Chairman Bedford said that he hoped that Mr. Genova was not criticizing the Commission for hearing both sides.

Mr. Genova said that he was not criticizing the Commission.

Chairman Bedford said that only by hearing all sides could the Commission flesh out the issues.

Mr. Genova said that Mr. Rainone call for a hearing on the motivations of the State Party Committee was out of line and premature. He said that if

someone is in violation of the law then there is a procedure for an enforcement hearing. He said that he did not know if Mr. Rainone understood the function of an advisory opinion request.

Mr. Genova said that he was troubled by Mr. Rainone's contention that since the Karcher campaign has done all of these activities already, these activities by the Democratic State Committees would necessarily aid only Congressman Florio. He added that the Florio campaign has also undertaken many of these activities.

Commissioner Linett said that it would be helpful if Mr. Genova could focus on the issue at hand.

Mr. Genova agreed. He said that as to the merits of the issue, if the Commission took Mr. Rainone's suggestion, the Commission would effectively be shutting down the parties. He said that candidates in the general election should benefit from this information without paying for it. Mr. Genova said that they are neutral undertakings and are generic.

Counsel Farrell said that if the activity benefits all candidates in the primary, then it is not something the Commission should proscribe.

Mr. Genova agreed, saying again that Mr. Florio has been engaged in many of these activities and that Mr. Karcher in no way would be prejudiced. He said that Mr. Karcher would have access to these activities.

Chairman Bedford said that Mr. Genova was begging the question of fairness.

Mr. Genova said that the Florio campaign and the Democratic State Committee were very familiar with Title 19.

Chairman Bedford recognized Mr. Greg Edwards, Executive Director of the Republican State Committee.

Mr. Edwards said that Commissioner Axtell was correct in stating that these activities are activities the State committees have been doing in an ongoing way. He said, however, that the parties are awaiting the answer to this advisory opinion request because this is a time when the State committees are most active, that the law contains an expenditure limit for the gubernatorial candidates and that the parties do not want to do anything that will hurt the general election candidate.

Commissioner Linett asked if it was right to assume that most of what is done is done for the general election, even though it is done in the pre-primary period.

Mr. Edwards said that as far as the Republican State Committee is concerned, that assumption is correct. He said that the party had to do these things ahead of time in order to prepare for the general election.

Mr. Edwards said that the parties do this on the federal level where the law treats parties differently from individuals.

Mr. Edwards said that this advisory opinion was important because the Republican State Committee does targeted research in order to target its message to the voters. He said that it did not want to be told in June that this expenditure will be allocated against the parties gubernatorial candidate in November. Mr. Edwards said that the infrastructure was in place and that these activities were appropriate for the parties to undertake.

Chairman Bedford asked if there was the possibility for abuse.

Mr. Edwards said that there is that possibility, but that incidents should be considered on a case by case basis.

Mr. Edwards said that the Republican State Committee would not do a poll on name identification, for instance, but on determining the most important issues in a targeted area. He said, furthermore, that the State committee would target independents and not Republicans.

Mr. Edwards continued by saying that he felt that the State committees should have the right not to share this information with all candidates just as much as it should have the right to share it with them. He said that, in any event, for practical reasons, this information will not be available in the primary.

Counsel Farrell asked Mr. Edwards if issue polling would be made available to primary candidates.

Mr. Edwards said that he did not know if the Republican State Committee would do issue polling now, but that if it did, it would make it available to all candidates.

Counsel Farrell asked if the Republican State Committee would be doing this for the general election. Mr. Edwards said that the committee most certainly would be undertaking this activity in the general election.

The Commission ended the public comment period.

Commissioner Linett said that after listening and reviewing the draft response, he had a couple of concerns. He said that the greater problem is in the primary election and suggested that the Commission limit its response to the primary setting and deal with the general election at a later time.

Commissioner Linett said that he understands the statute, in light of its history, to mean a State committee cannot endorse and cannot use the party apparatus to aid, unequally, any candidate. He said that he is somewhat concerned about this statute because philosophically, he believes there would be nothing wrong with the party endorsing candidates. He said that in any

event, even-handed conduct, which tends to benefit all candidates, is allowable.

Commissioner Linett said that the laws tended to weaken the parties and that the Commission should not do anything further to weaken the party system.

Commissioner Linett said that the advisory opinion should be very specific as to what is permissible, listing these activities. He said, for example, that anything that mentions the name of a candidate should be disallowed, whereas anything that is generic and benefits all in the primary, or just benefits the general election candidate, should be allowed and not allocated against the expenditure limit.

Chairman Bedford asked for further comment by the Commissioners.

Commissioner Axtell said that the advisory opinion draft as written by Counsel Farrell is fine as written.

Vice Chairman McNary concurred.

The draft opinion essentially states that this activity, provided it is non-specific to only one candidate, is permissible party activity and would not be counted against the expenditures limit of any primary or general election candidate.

Chairman Bedford said that the advisory opinion should have a strong statement that any inequality would be in violation of the election laws.

Chairman Bedford asked Mr. Edelstein if he would give the Commission an extension of one week to revise the draft of the opinion.

Mr. Edelstein agreed to the extension.

On a motion by Commissioner Linett, seconded by Vice Chairman McNary and passed by a vote of 4-0, the Commission approved the advisory opinion as per its directive to modify it to include strong language about inequitable treatment of candidates being in violation of the law.

##### 5. Executive Session

On a motion by Commissioner Linett, seconded by Commissioner Axtell and passed by a vote of 4-0, the Commission voted to go into Executive Session to discuss investigative and enforcement matters, the results of which will be made public at their conclusion.

6. Adjournment

On a motion by Commissioner Axtell, seconded by Commissioner Linett and passed by a vote of 4-0, the Commission voted to adjourn at 12:27 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

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